

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey Graetz	Team: Bias Squad #2	CCRB Case #: 202201120	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/19/2022 12:00 PM	Location of Incident: § 87(2)(b)	Precinct: 122	18 Mo. SOL 8/19/2023	EO SOL 8/19/2023	
Date/Time CV Reported Sat, 02/19/2022 12:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 02/19/2022 12:53 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Joseph Mirabello	01552	933999	122 PCT
2. PO Joseph Giambalvo	19877	965134	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Joseph Giambalvo	Abuse: Police Officer Joseph Giambalvo stopped § 87(2)(b)	§ 87(2)(b)
B. PO Joseph Mirabello	Abuse: Police Officer Joseph Mirabello stopped § 87(2)(b)	§ 87(2)(b)
C. PO Joseph Mirabello	Abuse: Police Officer Joseph Mirabello searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D. PO Joseph Mirabello	Discourtesy: Police Officer Joseph Mirabello spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E. PO Joseph Mirabello	Abuse: Police Officer Joseph Mirabello failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
F. PO Joseph Giambalvo	Abuse: Police Officer Joseph Giambalvo failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

## Case Summary

On February 22, 2022, § 87(2)(b) filed this complaint with the CCRB via the call processing system (**01 BR**).

On February 19, 2022, at approximately 11:36 a.m., § 87(2)(b) called 911 to report being assaulted by his landlord's son outside of his home at § 87(2)(b) in Staten Island. Police Officer Joseph Mirabello and Police Officer Joseph Giambalvo – both of the 122<sup>nd</sup> precinct – responded to the scene. The officers did not allow § 87(2)(b) to leave the scene until they were done questioning him (**Allegations A-B: Abuse of Authority**, § 87(2)(g). While keeping § 87(2)(b) on the scene, PO Mirabello reached into § 87(2)(b) car in the direction of § 87(2)(b) car keys (**Allegation C: Abuse of Authority**, § 87(2)(g). PO Mirabello made several comments – including asking § 87(2)(b) “what’s so hard to comprehend” and “how old are you” – during this interaction (**Allegation D: Discourtesy**, § 87(2)(g). Both officers failed to provide a business card to § 87(2)(b) as required by the Right to Know Act (**Allegations E-F: Abuse of Authority**, § 87(2)(g), § 87(4-b)).

This case was initially assigned to Investigator Adriaan Denbroeder and was reassigned to Investigating Attorney Casey Graetz.

The CCRB obtained body worn camera footage of this incident (**02-03 BR**).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Joseph Giambalvo stopped § 87(2)(b).**

**Allegation (B) Abuse of Authority: Police Officer Joseph Mirabello stopped § 87(2)(b).**

**Allegation (C) Abuse of Authority: Police Officer Joseph Mirabello searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b) made two 911 calls on February 19, 2022 (**04 BR**). In the second call, § 87(2)(b) reported that his landlord's son – § 87(2)(b) – assaulted him. (**05 BR**). PO Giambalvo and PO Mirabello responded to § 87(2)(b) in Staten Island to investigate § 87(2)(b) complaint. At § 87(2)(b) request, an ambulance was called to the scene and § 87(2)(b) was examined for any injuries. § 87(2)(b) was not treated for any injuries.

§ 87(2)(b) stated that soon after arriving at § 87(2)(b) PO Mirabello and PO Giambalvo told § 87(2)(b) that § 87(2)(b) was not going to be arrested because § 87(2)(b) did not have any marks or physical evidence that he was assaulted (**20 BR**). § 87(2)(b) wanted to know why § 87(2)(b) would not be arrested and told the officers he was going to go to the precinct. § 87(2)(b) got into his car, but the officers would not let him leave. The officers did not want § 87(2)(b) to leave until the situation was “resolved.” § 87(2)(b) believed the situation was already resolved because the officers were not going to arrest § 87(2)(b). PO Mirabello told § 87(2)(b) that he could not leave and would not let § 87(2)(b) turn his car on. While § 87(2)(b) was seated in his vehicle, PO Mirabello reached into the § 87(2)(b) car and tried to take § 87(2)(b) car keys.

The investigation obtained BWC from PO Giambalvo and PO Mirabello. At 6:01-6:10 of PO

Giambalvo's BWC (**02 BR**), PO Giambalvo can be heard saying "Joe, Joe, don't let him leave yet," before he enters § 87(2)(b) to speak with § 87(2)(b) landlord and § 87(2)(b). At 5:25-7:05 of PO Mirabello's BWC (**03 BR**), PO Mirabello instructs § 87(2)(b) to shut his car off, to put his car keys on the dashboard, and that he "can't leave yet until we establish what's going on." Between 10:15 and 19:13, EMS arrive and examine § 87(2)(b) for any injuries. § 87(2)(b) then walks back to his car. At 19:14-19:51, PO Mirabello instructs § 87(2)(b) to "hang out" and explains that § 87(2)(b) is "not being detained" because § 87(2)(b) "called the police." At 27:30-27:55, PO Giambalvo says "if you call 911 you have to wait and follow through with the investigation" in response to § 87(2)(b) saying "do you guys see this? I can't even leave" to an EMT. At 28:22-29:09, § 87(2)(b) asks to leave, and PO Giambalvo responds that § 87(2)(b) has to work with the police because he called them and PO Mirabello explains that § 87(2)(b) was "ready to leave at go, at the jump," and PO Mirabello "had to wait for § 87(2)(b) to comply."

PO Giambalvo testified that he told PO Mirabello not to let § 87(2)(b) leave because they were conducting a "full, well-rounded investigation at that point," and the officers had to speak with every party involved before letting anyone leave the scene. PO Giambalvo did not suspect § 87(2)(b) of committing a crime (**06 BR**).

PO Mirabello testified that § 87(2)(b) was not free to leave because he and PO Giambalvo were still trying to conduct an investigation and ascertain what happened (**07 BR**). PO Mirabello explained that there are many pieces of information the police need to gather when someone calls the police and civilians have a responsibility and are in some ways required to remain on the scene until that information has been gathered. Although § 87(2)(b) wanted to leave – and attempted to leave at several points, including by walking to his car – PO Mirabello had to feel comfortable with the information he had before allowing § 87(2)(b) to leave. PO Mirabello did not suspect § 87(2)(b) of any criminal activity or of doing anything wrong, but § 87(2)(b) was not allowed to leave before the officers knew the facts of the case.

At 5:50-6:20 of PO Mirabello's BWC (**03 BR**), PO Mirabello follows § 87(2)(b) to a car. § 87(2)(b) sits in the driver seat of the car with the driver door open. PO Mirabello stands next to the car and instructs § 87(2)(b) to shut the car off. At 6:09, PO Mirabello steps towards the car and leans his upper body down and toward the car. PO Mirabello's upper body crosses the plane of the door.

PO Mirabello testified that he gave § 87(2)(b) verbal commands to remain on the scene when § 87(2)(b) got into his car to leave (**07 BR**). PO Mirabello asked § 87(2)(b) to take the car keys out of the ignition. PO Mirabello then reached into § 87(2)(b) car to take § 87(2)(b) keys out of the ignition. PO Mirabello explained that he did not take the keys or put them in his pocket, he just wanted to remove the keys from the ignition and put them to the side to keep § 87(2)(b) car off. PO Mirabello initially testified he did not want to get run over if § 87(2)(b) planned on leaving. PO Mirabello then clarified he did not feel like he was in danger and only reached into § 87(2)(b) car to remove the keys to keep § 87(2)(b) on the scene so that PO Mirabello could be comfortable with the police investigation into § 87(2)(b) complaint.

According to *People v. De Bour*, 40 N.Y.2d 210, a civilian is considered stopped when a reasonable person would not feel free to disregard the officer and walk away, even without the threat of physical force (**08 BR**). Police officers must have a reasonable suspicion that a person has committed or is about to commit a felony or misdemeanor in order to stop said person.

Patrol Guide Procedure 212-11 (**09 BR**) states that a level one encounter does not require any suspicion of criminal activity, instead the officer gathers information, not focusing on the person as a potential suspect. During a level one encounter, the officer may not ask accusatory questions, prevent the person from refusing to answer and/or walk away, nor ask consent to search. A level three encounter rises to the level of a stop, and the person is detained while an investigation is conducted to determine if there is probable cause to arrest the person. A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor.

PO Giambalvo and PO Mirabello spent more than 30 minutes outside and around § 87(2)(b) interacting with § 87(2)(b). Around five minutes after they arrived, § 87(2)(b) attempted to leave the scene for the first time. Both PO Giambalvo and PO Mirabello decided that § 87(2)(b) was not free to leave because they were investigating § 87(2)(b) allegation that § 87(2)(b) assaulted him. Neither PO Mirabello nor PO Giambalvo suspected § 87(2)(b) of any criminal activity and only detained him to gather information in aid of their investigation of § 87(2)(b) complaint. PO Giambalvo and PO Mirabello continued to detain § 87(2)(b) after he was examined by EMS and again tried to leave the scene. PO Giambalvo and PO Mirabello maintained that § 87(2)(b) had to stay on the scene because he called the police. § 87(2)(b) was not free to leave and therefore was stopped throughout this interaction. § 87(2)(g)

According to *People v. Hernandez*, 238 A.D.2d 131, an officer breaching the plane of the car doorway with his body or arm to reach inside the vehicle constitutes a search of a vehicle (**10 BR**). There must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of a vehicle.

PO Mirabello reached into § 87(2)(b) car toward § 87(2)(b) car keys in an attempt to turn § 87(2)(b) car off and keep § 87(2)(b) on the scene. By reaching into § 87(2)(b) car, PO Mirabello breached the plane of the car with his arm and upper body. § 87(2)(g)

**Allegation (D) Discourtesy: Police Officer Joseph Mirabello spoke discourteously to § 87(2)(b).**

§ 87(2)(b) described PO Mirabello as acting aggressive when § 87(2)(b) wanted to go to the station house (**20 BR**).

At 6:52-7:05 of PO Mirabello's BWC (**03 BR**), § 87(2)(b) tells PO Mirabello that PO Mirabello is harassing him by telling him to take out his car key. PO Mirabello responds that § 87(2)(b) cannot leave until the officers establish what is going on and asks § 87(2)(b) "what's so hard to comprehend" and "how old are you." At 26:16-26:44, § 87(2)(b) asks if he can leave, and PO Mirabello says that § 87(2)(b) has been combative and asked for medical attention after first refusing it because § 87(2)(b) "wanted to play the game." PO Mirabello says that § 87(2)(b) was "stomping [his] feet" and "being a little childish about it."

PO Mirabello testified that § 87(2)(b) behavior was childlike because he and PO Giambalvo would ask pointed questions and § 87(2)(b) would try to buy more time and get

the answers he wanted (07 BR). PO Mirabello explained that he asked § 87(2)(b) about his age and comprehension because PO Mirabello was not sure § 87(2)(b) was at the age or mental status to understand what PO Mirabello was trying to explain to him. PO Mirabello was trying to explain that § 87(2)(b) was not being unlawfully detained, and that PO Mirabello only wanted § 87(2)(b) cooperation so that PO Mirabello could better understand § 87(2)(b) and better serve § 87(2)(b).

Patrol Guide Procedure 200-02 requires officers to maintain a higher standard of integrity than is generally expected of others and to treat every citizen with compassion, courtesy, professionalism, and respect (11 BR).

Although PO Mirabello testified that he was concerned about § 87(2)(b) comprehension, the BWC video does not support this explanation. Neither officer takes any action or says anything to demonstrate any concern over § 87(2)(b) mental state in the more than 30 minutes of conversation with § 87(2)(b). § 87(2)(b) is able to engage the officers in conversation and does not appear to have any problems with comprehension during this interaction. Rather, PO Mirabello seems to be expressing frustration over § 87(2)(b) correct understanding that he was not required to remain on the scene while PO Mirabello and PO Giambalvo completed their investigation. § 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Joseph Mirabello failed to provide § 87(2)(b) with a business card.**

**Allegation (F) Abuse of Authority: Police Officer Joseph Giambalvo failed to provide § 87(2)(b) with a business card.**

It is undisputed that neither PO Giambalvo nor PO Mirabello gave § 87(2)(b) a business card.

PO Giambalvo testified he did not issue § 87(2)(b) a business card because the officers had not stopped § 87(2)(b) and § 87(2)(b) did not request a business card (06 BR). A business card therefore was not required.

PO Mirabello testified he had business cards in his bag, but he had given § 87(2)(b) his name and shield number verbally, and he did not recall § 87(2)(b) asking for a business card (07 BR). PO Mirabello also believed he told § 87(2)(b) he worked at the 122 precinct, and remembered § 87(2)(b) filming or taking a picture of PO Mirabello's name and shield. PO Mirabello understands some interactions require giving civilians a physical business card, but PO Mirabello did not think he ever made himself inaccessible to § 87(2)(b).

Administrative Guide Procedure 304-11 (12 BR) and N.Y. City Administrative Code 14-174 (13 BR) state that officers are required to offer a business card to persons who have been stopped except in cases resulting in a summons or arrest. The card must include the officer's name, rank, shield number, command, and the phone number for the 311-customer service center and an indication that such phone number may be used to submit comments about the encounter between such officer and such person.

As discussed above, § 87(2)(b) was stopped by PO Giambalvo and PO Mirabello. They were therefore required to give § 87(2)(b) a business card and did not do so. In addition, business

cards include more information than what PO Mirabello provided to § 87(2)(b) § 87(2)(b)

§ 87(2)(g), § 87(4-b)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**14 BR**).
- PO Giambalvo has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject (**15 BR**).
- PO Mirabello has been a member of service for 18 years and has been a subject in one other CCRB complaint and two other allegations, which remain pending (**16 BR**). § 87(2)(g)

#### Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of October 18, 2022, a request to the New York City Office of the Comptroller for a Notice of Claim is pending.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 16

Investigator: /s/ Casey Graetz      Inv. Att. Casey Graetz      04/20/2023  
Signature      Print Title & Name      Date

Squad Leader: Tessa Yesselman IM Tessa Yesselman 04/20/2023  
Signature Print Title & Name Date

Reviewer: Darius Charney RPBP Dir. Darius Charne 05/05/23  
Signature Print Title & Name Date